Supreme Court, U.S.
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OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

October Term, 1996

Steven I. Burick,
Petitioner

v.

Broward County
and
Broward County Code and Zoning Enforcement Division
and
Broward County Code Enforcement Board,
Respondents

On Petition For Writ of Certiorari
To The Fourth District Court of Appeal of the State of Florida

---

PETITION FOR WRIT OF CERTIORARI

Steven I.Burick, Pro Se
1320 Lincoln Street
Hollywood, FL 33019
(954) 920-1584

22 pp

QUESTIONS PRESENTED FOR REVIEW

Petitioner states this is a civil case based on a denial of a certificate of use for a business.

1) Can a time bound state law be used to dismiss a case based on a non-time bound federal law, i.e. Florida Statutes, s. 162.11, versus the 14th Amendment of The Constitution of the United States of America?

2) Did the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida error when it dismissed the petitioner's case for lack of jurisdiction?

3) Does the Broward County Zoning Official's administration of Broward County Code, s. 39-1011(7), violate federal antidiscrimination laws, such as the equal protection of the laws clause of the 14th Amendment of The Constitution of the United States of America?

4) If yes, is it reasonable to ask that the law be declared null and void from the date it was first administered in that manner, if the law was intentionally and knowingly violated?

5) Does a zoning official have the right to refuse to obey an order from the board of adjustment, Broward County Code, s. 39-62(c)?

6) Is a board of adjustment a higher tribunal than a code enforcement board, Broward County Code, s. 39-62(d)?

7) If yes, does a code enforcement board automatically lose jurisdiction of a case when it goes before a board of adjustment, Broward County Code, s. 39-62(d)?

8) The petitioner tried to obtain a 30 day temporary injunction, which was deferred by the circuit court. Are the conditions stated by the respondents, and accepted by the court, too harsh and contradictory?

9) If a code enforcement board changes a final order, does an aggrieved party have 30 days to contest in circuit court the amended final order, Florida Statutes, s. 162.11?

10) Does the petitioner have the right to contest a code enforcement board final order within one year in circuit court if the final order is wrong, Florida Rules of Civil Procedure, Rule 1.540(b)?

11) Can a large accumulated fine be transferred when it is found that the final order was imposed against the wrong property, Florida Rules of Civil Procedure, Rule 1.540(a)?

12) Is it legal for the code and zoning department to modify a variance request before giving it to the board of adjustment?

13) Is it legal for the code and zoning department to modify an agreement made between the petitioner and the code enforcement board?

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OPINIONS BELOW

The final order from the Fourth District Court of Appeal of the State of Florida was filed on October 30, 1996.

The motion for rehearing was denied by the Fourth District Court of Appeal on December 16, 1996.

The petition for review was dismissed by the Supreme Court of Florida on January 21, 1997.

JURISDICTION

Jurisdiction to review this matter is founded upon Rule 10(c) of the Rules of the Supreme Court of the United States. The lower courts decision conflicts with the decision in Felder v. Casey, 487 U.S. 131, 101 L. Ed. 2d 123 (1988). "Any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield." It was incorrect to dismiss a non-time bound case based on federal law, because of a time bound state law. That is the 14th Amendment of The Constitution of the United States of America versus Florida Statutes, s. 162.11.

CONSTITUTIONAL PROVISIONS AND STATUTES

The Constitution of the United States of America, U.S. Government Printing Office, 1987.

> "State constitutional and statutory provisions and municipal ordinances held unconstitutional on their face or as administered (1789-1982)"

FOURTEENTH AMENDMENT

"Section 1. All persons born or naturalized in the United States

and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Felder v. Casey, 487 U.S. 131, 101 L. Ed. 2d 123 (1988)

"Any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield."

STATEMENT OF THE CASE

The federal question of discrimination was first raised in section 10 of the complaint presented to the 17th Judicial Circuit Court. The 17th Judicial Circuit Court dismissed the case for lack of jurisdiction. The Fourth District Court of Appeal affirmed the lower court's decision, and the Florida Supreme Court would not accept jurisdiction.

The respondents denied the petitioner his equal protection of the law on October 15, 1993 and have continued to do so. It is their intentional violation of the equal protection of the laws clause of the 14th Amendment of The Constitution of the United States of America that brings this matter before the Supreme Court. However, there is also a long list of actions that were made by the respondents that are also illegal. The state of Florida does not feel the violations are severe enough to pursue, and the Florida court system does not want to believe the county would violate the law, and would not even listen to the petitioner. The thirty minute circuit court meeting which was held to discuss the motion to dismiss this case lasted three minutes. The judge sat down, and asked the respondents attorney if this was a suit to contest a final order of the

Broward County Code Enforcement Board which was not filed within 30 days. The respondent said yes. The petitioner said no. The judge said thank you, I'll give you my decision in about 30 days. Before the judge could leave, the petitioner handed everyone a report fifty two pages long documenting his allegations. It included details on how the equal protection of the laws clause of the 14th Amendment of The Constitution of the United States of America was violated. That took one minute. The judge then talked for about two minutes about how he would have his assistant read the documentation, and then left. If the court had listened to the petitioner, then it might have denied the respondents motion to dismiss because the final order by the Broward County Code Enforcement Board was mistakenly written against the wrong property, which has a time limit of one year, Florida Rules of Civil Procedure, Rule 1.540(b).

It is the respondents position that the petitioner's tenant did not have a certificate of use to do auto body work. The petitioner and his tenant were found guilty of doing auto body work by the Broward County Code Enforcement Board. The petitioner failed to appeal the final order within the time limits set by state law, i.e. 30 days, Florida Statutes, s. 162.11, and the Circuit Court does not have jurisdiction to hear the case.

The petitioner maintains his case is based on a denial of a certificate of use on October 15, 1993, which his tenant tried to obtain. If someone is convicted of breaking a law, does that mean that he can not challenge the legality of the law later on? I do not mean challenging the final order, which is time limited, but the law the final order is based on.

This case is based on a denial of a certificate of use to do automobile body work at 4711 W. Hallandale Bch. Blvd., W. Hollywood, FL. The petitioner had a tenant, Horseless Carriage Bodyworks, residing at 4768 S.W. 28th Ave., W. Hollywood, FL. The Broward County Code and Zoning Division in 1993 gave the

tenant and owners of the property a notice of violation based on Broward County Code, s. 39-1011(7), for not being over 100 feet away from residential property. The petitioner applied to the Broward County Board of Adjustment for a variance, which was denied on 09/02/93. Across the alley from the building where the tenant resided, property tax I.D. No. 11230-03-15700, was another building, property tax I.D. No. 11230-03-16400, whose address is 4711 W. Hallandale Bch. Blvd., W. Hollywood, FL. That piece of property is more than 100 feet from any residential property. The tenant applied for a certificate of use to do automobile body work on that property. It was approved on 10/14/93, and denied on 10/15/93 upon the orders of the Broward County Zoning Official. According to the Zoning Official the 100 feet is, and always has been, measured from the nearest commercial property line to the nearest residential property line, no matter how large the piece of property. If the petitioner sold the property located at 4711 W. Hallandale Bch. Blvd. to someone else, then they could rent the property to an automobile body shop. If someone else has rights to rent this property for an automobile body shop, then the petitioner should also have the same equal rights, and equal protection of the law.

REASONS FOR GRANTING THE WRIT

This case is based on the rights granted by the equal protection of the laws clause of the 14th Amendment of The Constitution of the United States of America. The respondents are suppose to administer all laws in a legal manner. The respondents intentionally violated many laws many times, and will not even follow what the state laws say to do. The checks and balances system does not work in Broward County, and that is why the federal and state law questions need clarification.

CONCLUSION

Jurisdiction to review this matter is founded upon rule 10(c) of the Rules of the Supreme Court of the United States. The record on appeal is detailed and well documented. The petitioner maintains that the respondents are still denying him his equal protection of the laws granted by the 14th Amendment of The Constitution of the United States of America. Further, failure to exercise ones' rights granted under state law is not grounds for depriving someone of rights granted by The Constitution of the United States of America.

For the foregoing reasons, the petitioner respectively prays that this Court grant his application for a writ of certiorari.

Respectfully submitted,

Steven I. Burick, Pro Se
1320 Lincoln St.
Hollywood, FL 33019
(954) 920-1584

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT JULY TERM 1996

STEVEN BURICK
Appellant,

v.

Broward County Code & Zoning Enforcement Division and Broward County Code Enforcement Board,
Appellees.

CASE NO. 96-0476

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

Opinion filed October 30, 1996

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Leonard L. Stafford, Judge; L.T. Case No. 95-10717 (02).

Steven I. Burick, Hollywood, pro se.

John J. Copelan, Jr., County Attorney, and Anthony C. Musto, Assistant County Attorney, Fort Lauderdale, for appellees.

PER CURIAM.

AFFIRMED. See Grace v. Town of Palm Beach, 656 So. 2d 945 (Fla. 4th DCA 1995).

WARNER, PARIENTE and STEVENSON, JJ., concur.

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

STEVEN BURICK	:	
	:	
Plaintiff,	:	
	:	CASE NO.:
vs.	:	95-10717 (02)
	:	
BROWARD COUNTY CODE &	:	
ZONING ENFORCEMENT DIVISION	:	JUDGE:
and BROWARD COUNTY CODE	:	LEONARD L.
ENFORCEMENT BOARD,	:	STAFFORD
	:	
Defendant.	:	
	:	

FINAL ORDER DISMISSING COMPLAINT FOR LACK OF JURISDICTION

THIS CAUSE, having come before the court on Defendants' Motion to Dismiss the Complaint. The court having heard argument of counsel on December 12, 1995, and being fully advised on the premises, hereby finds:

On August 2, 1995, the plaintiff filed this complaint seeking an injunction, declaratory relief, and review of a final order of the Broward County Code Enforcement Board. The Broward County Code Enforcement Board entered a final order on May 30, 1995 finding the plaintiff guilty of operating a body ship with no certificate of use in a C-1 district less than 100 feet from a residential district in violation of Sections 39-7, and 39-1011 of the Broward County Zoning Code.

This court must dismiss the complaint on the grounds that the court lacks jurisdiction to entertain it. Statutory certiorari review

was available to review the decision of the county enforcement board provided plaintiff filed his notice of appeal within 30 days of the order to be appealed. See Florida Statutes s 162.11.

Timely filing of a notice of appeal is jurisdictional, and an appellate court is without authority to exercise its jurisdiction unless the notice is filed within the time and in the manner prescribed by the rules. See Lehmann v. Cloniger, 294 So. 2d 344 (Fla. 1st DCA 1974). Thus, plaintiff's right of review has extinguished, and is time barred.

Accordingly,

ORDERED AND ADJUDGED, the Defendants' Motion to Dismiss the Complaint is GRANTED.

DONE AND ORDERED, in Chambers at the Broward County Courthouse, this JAN 8 1996 day of January, 1996.

LEONARD L. STAFFORD

TRUE COPY

_____

LEONARD L. STAFFORD
CIRCUIT COURT JUDGE

Copies furnished to:
Steven Burick
Tracy H. Lautenschlager, Esq.

BROWARD COUNTY BOARD OF COUNTY COMMISSIONERS

CODE & ZONING ENFORCEMENT DIVISION
GOVERNMENTAL CENTER ANNEX - 2ND FL
115 SOUTH ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA 33301-1801

Broward County, Florida	)	
Petitioner	)	
	)	CODE ENFORCEMENT
Versus	)	BOARD II
	)	
MARTIN & DORIS BURICK	)	FINAL ORDER
ET AL,	)	
Respondents	)	CASE NO. 95-CZ-0021

LOCATION OF VIOLATION:
4711 West Hallandale Beach Boulevard, Hollywood, FL

LEGAL DESCRIPTION:
Hyde Park Second Section 26-1 B LOT 13 E 35, 14 BLK 8

The Code Enforcement Board heard testimony at a Formal Hearing held 05/25/95, and based on the evidence, the Board, pursuant to a vote, entered the following FINDINGS OF FACT, CONCLUSION OF LAW AND FINAL ORDER:

FINDINGS OF FACT

(1) The Respondents, Martin and Doris Burick et al, are and have been the owners of the premises at:
4711 West Hallandale Beach Boulevard, Hollywood, FL

(2) The Respondents have permitted on said property: operating a body shop with no certificate of use in a C-1 district less than100 feet from a residential district.

(3) Respondents have permitted the violations to remain on the premises after Notice of Violation and Notice of Hearing had duly been served by the County in accordance with law.

CONCLUSION OF LAW

THAT THE RESPONDENTS ARE IN VIOLATION OF SECTIONS 39-7 AND 39-1011 OF THE BROWARD COUNTY ZONING CODE.

ORDER

It is the Order of the Board, based upon the foregoing, the above named Respondents shall: cease auto body repair in a C-1 district WITHIN SIXTY (60) DAYS.

If RESPONDENTS do not comply within the time specified, they shall pay a fine of $100.00 per day for each day the violation continues to exist beyond the date set for compliance and shall commence on 07/30/95.

If RESPONDENTS do not comply within the time specified, the Code Enforcement Officer shall notify the Board and a certified copy of this Order together with an Affidavit of Non-Compliance may be recorded in the Public Records of Broward County, Florida, and once recorded, SHALL CONSTITUTE A LIEN as provided by law.

Upon complying, Respondents shall notify Ray Clement (305-468-3460), the Code Inspector, who shall inspect the property and notify the Board of compliance or non-compliance.

Should a dispute arise concerning compliance, either party may request a further hearing before the Board. The Board retains jurisdiction of the case and the parties to amend or modify the time periods or the fine imposed, and for enforcement and compliance.

DONE AND ORDERED this 30 day of May, 1995.

ATTEST:

/s Orlando Huget, Jr.
Orlando Huget, Jr.
Assistant Director

/s James A. Butkus, Chairman
James A. Butkus, Chairman
Code Enforcement Board

Certified Mail Receipt No. P-352-626-616

95-00411
1230-03-164

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

STEVEN BURICK,
Plaintiff,

v. Case No. 95-10717 (02)

BROWARD COUNTY CODE & ZONING ENFORCEMENT DIVISION and BROWARD COUNTY CODE ENFORCEMENT BOARD,
Defendants.
_____/

ORDER

THIS CAUSE having come before the Court on August 22, 1995, on Plaintiff's Notice of Hearing and Reason for Hearing (requesting a Temporary Injunction) dated August 14, 1995, the Court having heard argument from Plaintiff and of Defendant's counsel and being otherwise fully advised in the premises, it is:

ORDERED that Plaintiff's Motion for Temporary Injunction is hereby Deferred.

DONE AND ORDERED in Chambers, Fort Lauderdale, Broward County, Florida, this 22nd day of August, 1995.

LEONARD L. STAFFORD
Circuit Judge
TRUE COPY

Copies to:
Steven Burick
Tracy H. Lautenschlager, Assistant County Attorney

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

STEVEN BURICK
Appellant (s),

CASE NO. 96-00476

vs.

BROWARD COUNTY, et al.
Appellee (s)

L.T. CASE NO. 95-10717 02
Broward

December 16, 1996

BY ORDER OF THE COURT:

ORDERED that appellant's motion filed November 14, 1996, for rehearing is hereby denied.

I hereby certify the foregoing is a
true copy of the original court order.

s/ Marlyn Beuttenmuller
Marlyn Beuttenmuller
CLERK

cc. Steven Burick
Anthony C. Musto

/CH

Supreme Court of Florida

Tuesday, January 21, 1997

STEVEN BURICK,	**	
Petitioner,	**	CASE NO. 89,703
vs.	**	District Court of Appeal, 4th District - No. 96-0476
BROWARD COUNTY CODE & ZONING ENFORCEMENT DIVISION, et al.,	**	
Respondents.	**	

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. Dodi Publishing Co. v. Editorial America, S.A., 385 So. 2d 1369 (Fla. 1980)

No motion for rehearing will be entertained by the Court.

A True Copy

TEST:

SUPREME COURT
OF THE STATE
OF FLORIDA

Sid J. White
Clerk Supreme Court

H

cc: Hon. Marilyn N. Beuttenmuller, Clerk
Hon. Robert E. Lockwood, Clerk
Hon. Leonard Stafford, Judge

Mr. Steven Burick
Mr. Anthony C. Musto

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

STEVEN BURICK
Plaintiff,

CASE NUMBER: 95-10717 (02)

vs.

BROWARD COUNTY
and
BROWARD COUNTY CODE AND ZONING ENFORCEMENT DIVISION
and
BROWARD COUNTY CODE ENFORCEMENT BOARD
Defendants

AMENDED COMPLAINT

The Plaintiff, Steven Burick, sues the Defendants, Broward County and the Broward County Code and Zoning Enforcement Division and the Broward County Code Enforcement Board, and alleges as follows:

1) This is an action for injunctive and declaratory relief.
2) The Defendants are, Broward County, the Broward County Code and Zoning Enforcement Division, and the Broward County Code Enforcement Board.
3) The Plaintiff is sui juris and a resident of Broward County, FL.
4) The Plaintiff is an owner of a share in the real property located at located at 4711 W. Hallandale Bch. Blvd, W. Hollywood, FL 33023 and having the legal description as follows:
   Lots 6-7-8-9-10 together with the east 35.0 feet of lot 13, and all lots 14-15-16, Block B, "Hyde Park 2nd Section" according to the plat thereof recorded in Plat Book 26, Page 1 of the Public Records of Broward County Florida.
5) That said property is properly zoned C-1, as defined in the

Broward County Zoning Code, Section 39-1010 to 39-1025.

6) The Defendants have illegally and wrongfully ordered that plaintiff cannot rent said property for certain uses, which under the existing zoning code are permissible.
7) The Defendants have wrongfully misinterpreted Section 39-1011(7) of the Broward County Zoning Code.
8) The Defendants have wrongfully found the Plaintiff to be in violation of Section 39-1011(7), and have imposed a wrongful order against the Plaintiff dated August 31, 1995.
9) The property has been used in a like manner for a period of over 20 years, to wit: Body Shop.
10) Section 39-1011(7) is ambiguous, and the present interpretation by the Zoning Official violates the intent of the law, and violates Federal antidiscrimination laws.
11) The Plaintiff has met all conditions precedent prior to bringing this lawsuit, and a jury trial is demanded.

Wherefore, the Plaintiff prays the court to:

a) Strike out the following paragraph from Section 39-1011(7) of the Broward County Zoning Code.

"The following uses, when so located that no land allocated to such use or building occupied by such use lies within 100 feet of any residentially zoned property; provided that this separation requirement shall apply only to principle uses and not to accessory uses which are not included in the list of uses which follows:"

b) Declare null and void any violations based on Section 39-1011(7) of the Broward County Zoning Code and issued by the Defendants on or after September 29, 1980.

Date: 09/08/95

/s Steven Burick
Steven Burick, Plaintiff
1320 Lincoln St.
Hollywood, FL 33019
Telephone: (305) 920-1584